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FIRST GENERAL COUNSEL'S REPORT

MUR:

CELA
7018

DATE COMPLAINT FILED:

Feb. 26, 2016

DATE OF NOTIFICATION:

March 3, 2016

DATE OF LAST RESPONSE:

May 16, 2016

DATE ACTIVATED:

June 2, 2016

ELECTION CYCLE:

2016

EARLIEST SOL:

Aug. 11, 2020

LATEST SOL:

Dec. 18, 2020

COMPLAINANT:

American Democracy Legal Fund

RESPONDENTS:

Reform Washington and
Nancy H. Watkins in her official capacity
as treasurer

Carlos Lopez-Cantera

Carlos Lopez-Cantera for Senate and
Paul Kilgore in his official capacity as treasurer

Rick Wilson

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(8)(A)(i)

52 U.S.C. § 30116(a)

52 U.S.C. § 30116(f)

52 U.S.C. § 30118(a)

52 U.S.C. § 30125(e)(1)(A)

11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that an independent-expenditure-only political committee, Reform Washington and Nancy H. Watkins in her official capacity as treasurer ("Reform Washington"), made a prohibited in-kind contribution to Carlos Lopez-Cantera for Senate and Paul Kilgore in his official capacity as treasurer ("the Committee") by coordinating its expenditures with the Committee through a common vendor or former employee/independent contractor named Rick Wilson. Respondents deny the allegations.

As discussed below, the available information does not establish that Reform Washington paid for any communications that implicate the Commission's coordinated communications regulations. Accordingly, we recommend that the Commission find no reason to believe Respondents violated the Act.

II. FACTS

At the time of the Complaint, Carlos Lopez-Cantera ("Lopez-Cantera") was a 2016 candidate for the U.S. Senate in Florida.¹ Lopez-Cantera declared his candidacy on July 15, 2015, and on July 22, 2015, he filed both his Statement of Candidacy and a Statement of Organization designating Carlos Lopez-Cantera for Senate as his principal campaign committee.²

Rick Wilson was an independent contractor and consultant to the Committee from mid-2015 to December 1, 2015, and was paid through his consulting firm, Intrepid Media, Inc., a Florida corporation.³ The Committee made two disbursements to Intrepid Media—on

¹ <http://www.miamiherald.com/news/politics-government/election/article27290605.html>.

² Statement of Candidacy, Carlos Lopez-Cantera (July 22, 2015); Statement of Organization, Carlos Lopez-Cantera for Senate (July 22, 2015). Lopez-Cantera withdrew his candidacy on June 22, 2016. <http://www.floridapolitics.com/archives/214285-carlos-lopez-cantera-officially-drops-florida-senate-race>.

³ Reform Washington Resp. at 2 (Apr. 29, 2016) (joint response of Reform Washington and Rick Wilson).

1 August 11, 2015, and September 2, 2015, for "Marketing Consulting."⁴ Respondents assert that
2 the Committee and Wilson ended their relationship on December 1, 2015.⁵

3 Reform Washington is an independent-expenditure-only committee that registered with
4 the Commission on April 8, 2015.⁶ Reportedly, Reform Washington was formed to support
5 Lopez-Cantera.⁷ Reform Washington disclosed year-end total receipts of \$923,642 for 2015 and
6 disclosed a disbursement of \$7,500 to Intrepid Media for "Media Consulting" on December 18,
7 2015.⁸ On January 18, 2016, news media reported that Rick Wilson was leaving the Committee
8 to work at Reform Washington as an advisor for its independent efforts to support Lopez-
9 Cantera.⁹

10 Based on Wilson's and Intrepid Media's connections to both the Committee and Reform
11 Washington, the Complaint alleges that Reform Washington was coordinating (or was about to
12 coordinate) its activities with the Committee. The Complaint alleges that the payment and
13 content prongs of the coordinated communications test are satisfied because Reform Washington
14 raised \$923,642 to make independent expenditures, hired Wilson, and "paid Intrepid Media
15 \$7,500 for consulting services at a time when Wilson was employed as a consultant by the
16 Lopez-Cantera campaign."¹⁰ Without explaining the basis for its contention, the Complaint

⁴ 2015 October Quarterly Report, Carlos Lopez-Cantera for Senate (Oct. 15, 2015).

⁵ Committee Resp. at 2 (Apr. 29, 2016); Reform Washington Resp. at 2.

⁶ Statement of Organization, Reform Washington (Apr. 8, 2015).

⁷ Andrea Drusch, *Republican Candidate Adopts Jeb Bush Super-PAC Strategy for the Senate*, The National Journal (May 19, 2015), available at: <http://www.theatlantic.com/politics/archive/2015/05/republican-candidate-adopts-jeb-bush-super-pac-strategy-for-the-senate/435291/>.

⁸ 2015 Year End Report, Reform Washington (Jan. 31, 2016).

⁹ See Mitch Perry, *Rick Wilson Transitions to Carlos Lopez-Cantera's Super PAC*, Florida Politics (January 18, 2016), available at: <http://www.floridapolitics.com/archives/198899-198899>.

¹⁰ Compl. at 4 (Feb. 26, 2016). The receipt and disbursement amounts appear in Reform Washington's 2015 Year-End Report, the most recent disclosure report at the time of the Complaint. Reform Washington has since made several additional monthly disbursements in the amount of \$7,500 to Intrepid Media for "Media Consulting"

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1 claimed that Reform Washington's \$7,500 payment to Intrepid Media for "Media Consulting" in
2 December 2015 shows that Intrepid Media or Wilson was performing the same or similar
3 services for Reform Washington as it did for the Committee. Compl. at 5. The Complaint,
4 however, did not identify any specific Reform Washington communication that it alleged was
5 coordinated.

6 Respondents assert that the allegations are frivolous, unsupported, and should be
7 dismissed.¹¹ Respondents state that Intrepid Media was never a common vendor of the
8 Committee and Reform Washington because the Committee severed ties with Wilson and
9 Intrepid Media on December 1, 2015, and Intrepid Media only began providing consulting
10 services to Reform Washington after Wilson left the Committee.¹² Respondents also assert that
11 Reform Washington had not paid for or produced any public communication that expressly
12 advocated for or against any candidate as of April 29, 2016, the date of their responses.¹³

on January 14, February 4, March 1, April 4, May 2, and June 2, 2016. 2016 April Quarterly Report, Reform Washington (Apr. 15, 2016); 2016 July Quarterly Report, Reform Washington (July 14, 2016).

¹¹ Committee Resp. at 1; Reform Washington Resp. at 1.

¹² Committee Resp. at 2; Reform Washington Resp. at 2.

¹³ *Id.* The Committee asserts that since Wilson and Intrepid Media ceased providing services to the Committee on December 1, 2015, their 120-day "cooling off" periods under the Commission's coordinated communication regulations ended on March 29, 2016, and that even if it had sponsored a communication, any such expenditures that Reform Washington made to support Lopez-Cantera after that date would not be deemed coordinated under a common vendor or former independent contractor legal theory. Committee Resp. at 3. Respondents further assert that when Wilson was hired, he signed Reform Washington's written firewall policy agreement, which prohibits any coordination between Reform Washington's employees or consultants and Committee employees, and they provided a copy of Wilson's signed, but undated agreement. Reform Washington Resp. at 2, 3, Attach. 1. Reform Washington and Wilson further assert that the Complaint has not shown that Wilson violated the firewall agreement or that Intrepid Media used or conveyed to Reform Washington material information about the Committee's plans, projects, activities, or needs. Reform Washington Resp. at 3.

1 **III. LEGAL ANALYSIS**

2 The Act prohibits any person from making, and any candidate or committee from
3 accepting or receiving excessive or prohibited contributions.¹⁴ In addition, independent
4 expenditure-only political committees are prohibited from making contributions to federal
5 candidates.¹⁵ The term "contribution" includes anything of value given for the purpose of
6 influencing a federal election.¹⁶ Further, any expenditure made by a person "in cooperation,
7 consultation, or concert, with, or at the request or suggestion of, a candidate, authorized political
8 committee, or a national or state party committee" is considered an in-kind contribution.¹⁷ These
9 expenditures are deemed "coordinated."¹⁸

10 A communication is coordinated when the communication: (1) is paid for, in whole or
11 part, by a person other than the candidate, committee, or party ("payment prong"); (2) satisfies at
12 least one of the content standards described in 11 C.F.R. § 109.21(c) ("content prong");¹⁹ and
13 (3) satisfies at least one of the conduct standards described in 11 C.F.R. § 109.21(d) ("conduct
14

¹⁴ 52 U.S.C. § 30116(a), (f). *See, e.g.* 52 U.S.C. § 30118(a)(illegal to make or knowingly receive corporate or union contributions).

¹⁵ Advisory Op. 2010-11 (Commonsense Ten).

¹⁶ 52 U.S.C. § 30101(8)(A)(i).

¹⁷ *See* 52 U.S.C. § 30116(a)(7)(B)(i)-(ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

¹⁸ 11 C.F.R. § 109.20.

¹⁹ The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication that, in relevant part, refers to a clearly identified Senate candidate, and is publicly distributed or disseminated in a jurisdiction 90 days or fewer before the candidate's primary election or nominating caucus in that jurisdiction; or (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c)(1)-(5).

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1 prong”),²⁰ including the “common vendor” and “former employee or independent contractor”
2 standards cited in the Complaint.²¹ All three prongs must be satisfied for a communication to be
3 considered coordinated.²²

4 The available information fails to show that the coordinated communications regulation
5 is implicated. The Complaint infers that the payment and content prongs were met, or were
6 about to be met, because Reform Washington had raised almost \$1 million for independent
7 expenditures to support federal candidates, and Lopez-Cantera was the candidate it indicated it
8 would be supporting. However, there is no information that Reform Washington ever paid for
9 any public communications or electioneering communications supporting Lopez-Cantera.²³

10 Accordingly, we recommend that the Commission find no reason to believe Reform
11 Washington and Nancy H. Watkins in her official capacity as treasurer, Rick Wilson, Carlos
12 Lopez-Cantera, and Carlos Lopez-Cantera for Senate and Paul Kilgore in his official capacity as
13 treasurer violated the Act.

14 IV. RECOMMENDATIONS

- 15 1. Find no reason to believe Reform Washington and Nancy H. Watkins in her official
16 capacity as treasurer violated the Act.
17
18 2. Find no reason to believe Rick Wilson violated the Act.

²⁰ The six types of conduct that satisfy the conduct prong are: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material. *Id.* § 109.21(d)(1)-(6).

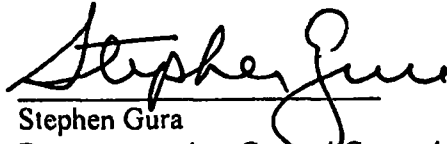
²¹ *Id.* § 109.21(a)(1)-(3).

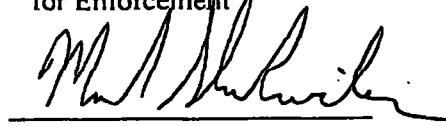
²² 11 C.F.R. § 109.21(a)


²³ Reform Washington's disclosure reports show no disbursements for independent expenditures, and the Commission's database does not show that Reform Washington filed any independent expenditures or electioneering communications reports. *See, e.g.*, 2016 July Quarterly Report, Reform Washington (July 14, 2016); http://www.fec.gov/finance/disclosure/cc_table.shtml. Our review of publicly available information does not show that Reform Washington has distributed any such communications, and Lopez-Cantera withdrew his candidacy on June 22, 2016. Further, there does not appear to be sufficient information to support a reasonable inference that Reform Washington made any expenditures unrelated to public communications that were coordinated with Lopez-Cantera or Carlos Lopez-Cantera for Senate. 11 C.F.R. § 109.20(b).

3. Find no reason to believe Carlos Lopez-Cantera, and Carlos Lopez-Cantera for Senate and Paul Kilgore in his official capacity as treasurer violated the Act.
4. Approve the attached Factual and Legal Analysis.
5. Approve the appropriate letters.
6. Close the file.

8.30.16
Date


Stephen Gura
Deputy Associate General Counsel
for Enforcement


Mark Shonkwiler
Assistant General Counsel


Kamau Philbert
Attorney